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REMARKS

Upon entry of this amendment, claims 1-27 will be pending in the above-identified application.

Applicants acknowledge the allowability of claims 11, 13-20 and 27.

Drawings

Applicants request reconsideration of the objection under 37 C.F.R. § 1.83(a). The Office Action states, "the plurality of openings within the elongate body attaching the backboard to the elongate shell of claims 11,13 and 27 must be shown or the feature(s) canceled from the claim(s)." As stated in the first paragraph on page 8 of the application,

The backboard assembly 14 may be attached to the elongate shell 12 using any suitable releasable or permanent attachment. However, as illustrated in Figs. 5 and 6, in the exemplary embodiment the backboard 100 includes a plurality of openings, generally referred to by the reference numeral 136, within the body 104 adjacent a peripheral edge 138 of the body for stitching the backboard 100 to the cover 102, the elongate shell 12, or both. For example, in one embodiment, the backboard 100 is stitched to the cover 102 using the openings 136, and the cover is separately attached to the elongate shell 12 using any suitable attachment. In another embodiment, the backboard 100 is stitched to the elongate shell 12 using the openings 136 and the cover 102 is not separately attached to the shell. In yet another embodiment, the backboard 100 is stitched to both the cover 102 and the elongate shell 12 using the openings 136. Although other shapes are envisioned for the openings 136 without departing from the scope of the present invention, in one embodiment the openings 136 are generally circular.

Clearly, openings 136 depict one embodiment of the features identified in the Office Action. Therefore, Applicants request the objection be withdrawn.

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Claim Objections

Applicants request reconsideration of the objections to claims 5 and 6 for informalities. The amendment made herein overcomes the formalities. Thus, Applicants request the objections be withdrawn.

Section 103 - Robb in view of Magnusen

Claims 1, 3, 4, 7-10 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 02/098263 (Robb) in view of U.S. Patent No. 5,129,406 (Magnusen). Each of the claims recites a garment comprising an elongate shell having an outer surface, and an inner surface opposite the outer surface defining an interior volume for receiving the arms, legs, and trunk of a baby therein, said shell having a head end, a foot end opposite the head end, lateral sides extending between the head end and the foot end, a front corresponding to a front of the baby when received within the interior volume of the shell, a back opposite the front, and a neck opening at the head end for receiving a neck of the baby, and a backboard attached to the back of the elongate shell.

The Office Action uses hindsight to reconstruct Applicants' invention. The reason provided in the Action for combining the references is to simulate the pressure from the womb. This reasoning presupposes the invention. The references taken together teach two separate concepts. There is no reason for combining the references apart from a desire to recreate Applicants' invention. Robb teaches using a support for diaper changing, feeding and for restraining an infant in a chair. Given Robb's stated purposes for Robb, it is difficult to imagine why one would need to simultaneously swaddle the infant as taught by Magnusen. According, the references fail to provide any motivation for their combination.

Even if one were to combine the references, the combination would not disclose all of the features recited in the claims. In particular, the combined references fail to disclose or suggest a backboard attached to the back of the elongate shell. Rather, if one were to combine the references, one would have a garment for swaddling drug addicted infants and a separate support strapped over the front face of the garment for

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diaper changing, feeding and for restraining an infant in a chair. The combined references do not disclose or suggest a garment comprising an elongate shell and a backboard attached to the back of the elongate shell. Because the combined references fail to disclose or suggest all of the claim features, the Section 103 rejection is improper and should be withdrawn.

Section 103 - Tandrup in view of Magnusen Claims 1, 2, 5 and 6

Claims 1, 2, 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,826,287 (Tandrup) in view of Magnusen. Each of the claims recites a garment comprising an elongate shell having an inner surface defining an interior volume for receiving the arms, legs, and trunk of a baby therein and a backboard attached to the shell.

The Office Action again uses hindsight to reconstruct Applicant's invention. The reason provided in the Action for combining the references is to simulate the pressure from the womb and to restrain the infant in a sleeping position. This reasoning presupposes the invention. The references taken together teach two separate concepts. There is no reason for combining the references apart from a desire to create that which Applicant invented. Tandrup teaches using a device for supporting and positioning premature infants such as in car seats. Magnusen discloses a swaddle for drug addicted infants. Given these widely diverging goals, it is difficult to imagine why one would combine the references apart from a desire to reconstruct Applicant's claims.

If the references were combined, the combination would not disclose all of the features recited in the claims. In particular, the combined references fail to disclose or suggest a backboard attached to the back of the elongate shell. Rather, if one were to combine the references, one would have a garment for swaddling drug addicted infants and a separate support strapped over the front face of the garment for positioning a premature infant in a car seat. The combined references do not disclose or suggest a garment comprising an elongate shell and a backboard attached to the back of the elongate shell. Because the combined references fails to disclose or suggest all of the claim features, the Section 103 rejection is improper and should be withdrawn.

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Section 103 - Tandrup in view of Magnusen Claims 1, 2, 5 and 6

Claims 21-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tandrup in view of Magnusen. Each of the claims recites a rigid backboard comprising an elongate body extending between a head end and a foot end, a flexible hinge positioned on the body between the head end and the foot end for facilitating positioning the baby within the garment, a headboard extending from the head end of the body for supporting a head of the baby when the baby is swaddled within the garment, and an extension extending generally laterally from the body.

As discussed above, there is no motivation for combining the references apart from a desire to reconstruct the claims. Moreover, if the references were combined, the combination would not disclose or suggest every feature recited in the claims. The Tandrup device is flexible and made of foam. The claims recite a rigid backboard which prevents the infant from turning over. Thus, the Tandrup device teaches away from the claimed backboard. Accordingly, the cited references fail to disclose or suggest the claimed invention and the Section 103 rejection should be withdrawn.

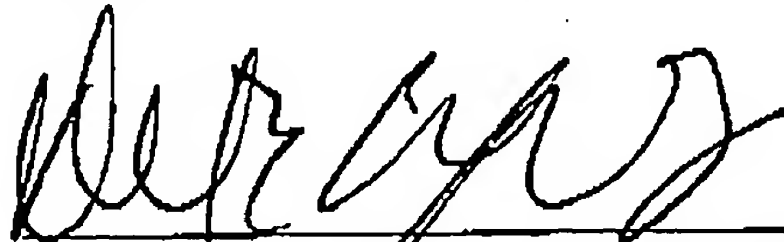
Conclusion

If the Examiner believes that there is any issue which could be resolved by an interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

As it is believed that application is in condition for allowance, a favorable action and Notice of Allowance are respectfully requested.

Dated: March 9, 2005

Respectfully submitted,



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